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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/835,861	04/16/2001	Robert Lutzker		5602

7590 12/21/2004

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EXAMINER	
SHERRER, CURTIS EDWARD	
ART UNIT	**PAPER NUMBER**
1761	

DATE MAILED: 12/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/835,861	LUTZKER, ROBERT	
	Examiner	Art Unit	
	Curtis E. Sherrer, Esq.	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11/28/04*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-29* is/are pending in the application.

4a) Of the above claim(s) *17-22* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-16 and 23-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Claims 17-22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-16 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is indefinite because the scope of the phrase "in proximity thereto" is unknown.

Claims 13, 14 and 15 are indefinite because there is no antecedent basis for the phrase "the magnet facing the bottle."

Claim 26 is indefinite because it is not clear which "said magnet" is being referred to, i.e., first or second.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1-3, and 5 are rejected under 35 U.S.C. 102(e) as being anticipated by Pieffer (USPN 6,287,614).

Pieffer teaches an apparatus for treating wines that comprises a circular magnet that has an orifice that could receive a second magnet of any shape. It is noted at this point, that the phrase "having an orifice therein for receiving a second magnet refers to an intended use, rather than positively reciting the presence of a second magnet. See abstract and figures. The patent teaches that the wine bottle and its contents can be placed on the magnet to be treated.

The device is comprised of a permanent magnet, sandwiched between a top piece and a base holder, this container cam be a variety of material, including metal. (Col. 4, lines 11-15).

Figure 4 shows the apparatus in the form of a ring magnet. Col. 4, lines 51-57, discloses that the magnet can be housed in any one of a variety of materials and is large enough to hold a bottle within its center diameter or placed upon its surface and is of sufficient gauss strength to produce the desired organoleptic changes.

With regard to the claims directed to the container being filled with a coffee beverage, this is considered to be an intended use of the apparatus and therefore is given no patentable weight.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Holcomb et al. (5,113,751)("Holcomb").

Holcomb teaches the treatment of coffee with a magnet to reduce the bitterness. The magnetic treatment "may employ a multi-magnet concept to create sharp field boundaries." Abstract. Holcomb teaches that the strength of the magnets used in the treatment system of the present invention may be increased by design or by stacking a plurality of smaller magnets raidially with respect to the axis of the conduit. (Col. 8, lines 29-33). The upper portion of the container has a conduit surrounded by magnets **20**. See figures.

Holcomb teaches that the magnets are faced charged, circular, ceramix or neodymium magnets (other shapes can be used) having strength of about 2000-3000 gauss. This would be the total gauss value and the upper gauss value would be approximately half that value, or the same as that claimed. It is noted that one can stack a plurality of smaller magnets raidially, which would produce a shape very similar to a cone. (Col. 8, lines 22-32). It is also noted that the term "orifice" is broadly interpreted as meaning an opening.

With regard to the claims directed to the container being filled with a wine or alcoholic beverage, this is considered to be an intended use of the apparatus and therefore is given no patentable weight.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 4, 6-16 and 23-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pieffer in view of Yu (USPN 6,390,319).

Pieffer teaches that cited above but does not teach the use of a magnet that is used to treat the top surface of the container. Yu teaches a beverage, magnetizing container that relies on a magnet **24** in the bottom of the container and a magnet **17** in the top of the container. (See Fig. 2). It would have been obvious to one of ordinary skill in the art to utilizes the two magnet arrangement disclosed for the container of Yu in the container of Pieffer in order to expose the beverage to the purifying therapeutic effects of the magnets (col. 1, lines 38-40).

With regard as to the relative polarities, the patent disclosures are silent. It would have been obvious to those of ordinary skill in the art to arrange the polarities in either direction because it is merely one of design choice.

With regard to the gauss value of the magnets, it is a notoriously well known that the gauss value of a magnet is a result effective variable, i.e., the value will affect the

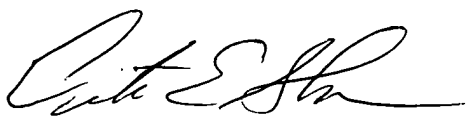
aging of the wine. Therefore, it would have been obvious to those of ordinary skill in the art to optimize the value so as to "to produce the desired organoleptic changes." See Pieffer.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis E. Sherrer, Esq. whose telephone number is 571-272-1406. The examiner can normally be reached on Tuesday-Friday, 8AM-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Curtis E. Sherrer, Esq.
Primary Examiner
Art Unit 1761